



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

November 6, 2009

Memorandum for: Chief of Personnel

**Subject: CREDITING OF SUSPENSION DAYS PREVIOUSLY SERVED;
REASSIGNMENT OF P.P.O. THAMESHWAR SHARMA,
TAX NO. 942537, UPON RESTORAL TO FULL DUTY**

1. P.P.O. Thameshwar Sharma, Tax # 942537, was recently the subject of Disciplinary Case No. 83497/07 and was found Not Guilty of the disciplinary charges pending against him.
2. The Police Commissioner approved the findings and also directs that all suspension days previously served in this matter be credited back to P.P.O. Sharma. Further, that when P.P.O. Sharma is restored to Full Duty, he is to be reassigned to his prior permanent command, the Patrol Borough Queens South Task Force.
3. Forwarded for necessary attention.

BY DIRECTION OF THE POLICE COMMISSIONER

Michael E. Shea
Deputy Chief
Commanding Officer
Police Commissioner's Office



POLICE DEPARTMENT

September 1, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Thameshwar Sharma
Tax Registry No. 942537
Housing Borough Brooklyn
Disciplinary Case No. 83497/07

The above-named member of the Department appeared before me on June 9, 2009 and July 29, 2009, charged with the following:

1. Said Probationary Police Officer Thameshwar Sharma, assigned to Patrol Borough Queens South Task Force, while off-duty, on or about November 11, 2007, in [REDACTED], with intent to harass, annoy, threaten or alarm another person, did communicate with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm, to wit: said Probationary Police Officer did place a call to an individual, identity known to the Department, Vinesha Sirkissoo, and stated, "If you don't come out, I'm going to kill you." (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 240.30 1(a) – AGGRAVATED HARASSMENT
IN THE SECOND DEGREE

2. Said Probationary Police Officer Thameshwar Sharma, assigned to Patrol Borough Queens South Task Force, while off-duty, on or about November 11, 2007, in [REDACTED], with intent to harass, annoy, threaten or alarm another person, did communicate with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm, to wit: during a telephone call, said Probationary Police Officer did state numerous times to an individual, identity known to the Department, Hamekaren (David) Ramsaren, "I will pop you and I can do whatever I want, I'm a cop." (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 240.30 1(a) – AGGRAVATED HARASSMENT
IN THE SECOND DEGREE

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The Department was represented by Amy Avila, Esq. Department Advocate's Office and Respondent was represented by Roger Blank, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos. 1 and 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Paul Campanella and Sergeant Neithra Vincent as witnesses.

Sergeant Paul Campanella

Campanella is a 17-year member of the Department assigned to the 105 Precinct in Queens. He has worked there for seven-and-a-half years and is a patrol supervisor.

Campanella recollected that on November 11, 2007 at about 6:42 PM, he received a signal 10-39¹ radio call from the dispatcher involving an off-duty member of the Department. He reported to the location of the call, [REDACTED], and arrived there in five to ten minutes. Upon his arrival, he met with Hamekaren (David) Ramsaren who reported that the Respondent had been present at the location earlier. When he went inside to speak with Vinesha Sirkisson, she claimed that the Respondent had stopped by

¹ The radio signal code used to designate "other crime in progress."

in his car and telephoned her, asking her to come outside. When she refused, he threatened to kill her. After being informed of this, Campanella requested the Duty Captain. Campanella along with Ramsaren and Sirkisson then proceeded to the 105 Precinct.

Campanella arrested the Respondent later that evening at about 10:30 pm. Campanella explained that he telephoned the Respondent on his cellular phone and asked him to report to Patrol Borough Queens South located at the 107 Precinct.

On cross-examination, Campanella agreed that when he first spoke to Ramsaren, he never made any allegations that the Respondent threatened to “pop” or shoot him. While he knew that he spoke to Sirkisson, he was not sure if he spoke to her and Ramsaren separately. He testified that the impression that he received in speaking with Sirkisson was that she “seemed to be a reluctant complainant.” He agreed that she seemed to be coached; he said, “I was under the impression that she was being coached by who [she] said was her current husband.” He noted that Ramsaren identified himself initially as Sirkisson’s husband, something he learned to be false.

In recalling his conversation with Sirkisson, Campanella recalled that she made claims that were not charged in this case. Specifically, she claimed that the Respondent handcuffed her and put her in the back of his car at gunpoint and took her somewhere. He clarified that Sirkisson claimed that this took place months prior to the event in this case, and it was determined that at that time, the Respondent would not have even been in possession of a firearm because he was in the Police Academy. Campanella did not believe this claim was true, and he brought it to the attention of the investigators.

Campanella agreed that he filled out an online booking sheet for the Respondent's arrest and admitted that his partner helped him as it had been quite some time since he processed an arrest. He said that he has been a sergeant for seven-and-a-half years. After reviewing the online booking sheet related to the arrest, he agreed that it was incorrect. The location of the arrest was actually at the 107 Precinct. Campanella agreed that when the Respondent arrived at the precinct, he was "absolutely" cooperative. He did not question him about the allegations.

On redirect examination, Campanella agreed that Sirkisson mentioned a prior incident with the Respondent involving a gun. He reiterated that he believed there was an issue with the time frame in Sirkisson's allegation. She never specified that the gun was Department issued. Campanella said it was a possibility that the gun was illegal, and he agreed that sometimes crimes are unreported.

During re-cross examination, Campanella said that he did not believe any illegal weapons were involved in Sirkisson's claim. He said he has no knowledge of any illegal weapon being used in her earlier allegation.

On examination by the Court, Campanella said that the scene of the call was in the 105 Precinct. He was met by Ramsaren there, in the driveway, in front of the house. He spoke with Sirkisson in the basement apartment of that house. He reiterated that she claimed the Respondent was outside of the house and wanted her to come outside. Campanella recalled that she said she was not coming outside and telephoned the police. When he arrived, the Respondent was no longer at the scene.

Sergeant Neithra Vincent

Vincent has been a member of the Department for about 16 years. She is assigned to the Patrol Borough Queens South Investigations Unit where she investigates allegations of misconduct.

Vincent testified that she investigated the case against the Respondent, although she noted the original investigator was Sergeant Greg Contino. Contino was the investigator who initially interviewed the complainants on November 11, 2007, immediately after the allegations were made. As a result of the investigation, Vincent affirmed that the case was substantiated. She said that she never spoke to Sirkisson or Ramsaren until 2009.

During her investigation, she reviewed the 911 call and the associated transcription. Additionally, she reviewed a supporting deposition that Sirkissoon signed. A review of the Respondent's cellular telephone records revealed that there were "no indication of incoming or outgoing calls" because it was a pre-paid phone.

On cross-examination, Vincent said she has been assigned to the Investigations Unit for five years. She agreed that cases can be determined to be substantiated, unsubstantiated and exonerated. She also agreed that when investigating cases involving criminal allegations, the case is investigated to meet a criminal burden of proof.

Vincent recalled that she was assigned this case on November 27, 2007. Prior to that date, the only investigation that had been conducted was the interview of the complainants on the night of the Respondent's arrest. Upon being assigned the case, Vincent said she received a copy of the 911 call and a copy of the SPRINT report. Additionally, she testified that she received all of the paperwork generated on the evening

of the incident, including the arrest paperwork, complaint report and domestic incident reports. She affirmed that she listened to the 911 call and the tapes of the interviews. Vincent testified that it is not the job of an investigations unit to investigate criminal allegations. She indicated that she did not know the status of the Respondent's criminal case until it had been disposed of in April of 2008. Between November 27, 2007, and April of 2008, Vincent said she was in contact with the Assistant District Attorney (ADA) assigned to the Respondent's criminal case, and was apprised of adjournments in the case.

Vincent reiterated her belief that it was the court's obligation to investigate criminal matters. When asked, hypothetically, who the ADA would contact if she needed "something" looked into, Vincent reiterated that her unit is not responsible for criminal prosecutions.

As part of her investigation, Vincent agreed that she listened to the 911 call and examined witness statements. She also agreed that in an investigation, she looks for inconsistencies. Vincent stated, however, that she does not investigate to determine if someone is being untruthful, she investigates to determine if an allegation is substantiated, unsubstantiated, unfounded or exonerated. She explained that in an investigation, it cannot always be determined if an allegation is true. Vincent testified, "You might have one side telling you yes, it is true, and then you might have another party telling you, no, it's not true; therefore, that comes unsubstantiated."

In the 911 call, Ramsaren claimed that the Respondent was outside of his apartment. Vincent recalled that he claimed to be able to identify the color of the Respondent's car, and said it was a light colored [REDACTED]. She noted that a check

of Department of Motor Vehicle records showed that the Respondent has a [REDACTED] and not a [REDACTED]. Vincent also recalled Ramsaren stating that he had previously filed reports about the Respondent in the past, although she was unable to find any complaint reports on file reflecting same.

Vincent did not recall Sirkisson, in her interview, claim that the Respondent and Ramsaren were in the Respondent's car talking. Counsel for the Respondent then directed Vincent's attention to Sirkisson's interview in evidence (see Department's Exhibit [DX] 2B, transcription of November 11, 2007 interview):

Sergeant Contino: Your boyfriend (Ramsaren) answered the phone?

Sirkisson: Yes, he answered. And he said he was going to come in the house. I didn't go outside. I stayed in side. My boyfriend was out there in his car. They were talking.

Vincent was asked if she found it odd that Ramsaren, who claimed to be in fear of the Respondent, was reported to have been in his car with him. Vincent said, "You know, I completely missed that. I completely missed that."

A recording of interviews of Ramsaren and Sirkisson were played for the Court (see DX 3A, recording of March 9, 2009 and March 12, 2009 telephonic interviews).

Vincent acknowledged that she has listened to this tape before. When questioned about Ramsaren's statement during the interview, "If he (the Respondent) can't get my wife, nobody gonna get her. It means to kill her, he's going to kill her [,]" Vincent agreed that this allegation was never made using these words prior to this telephone interview. She noted that the initial allegation made by Ramsaren was that the Respondent threatened to "pop" Ramsaren. Additionally, Ramsaren also claimed on the tape that the Respondent

tried to run Sirkisson over with his car, an allegation that Vincent claimed she was hearing for the first time.

Vincent acknowledged that Sirkisson alleged that the incident occurred between 6:30 PM and 6:40 PM. After viewing a worksheet to refresh her recollection, Vincent said that she made a typographical error and that Ramsaren reported that his incident with the Respondent occurred at 7:00 PM and not 5:00 PM.

None of Sirkisson or Ramsaren's neighbors was interviewed about this incident. She reiterated that Ramsaren alleged that he had a verbal dispute with the Respondent who was yelling. When asked for her opinion as an investigator as to whether it would have been helpful to interview other witnesses (who might have heard the yelling), Vincent said, "You know, I can't say in this case. It was—it occurred in a basement."

Vincent reiterated that she examined the Respondent's cellular phone records. She recalled that his phone number ended in "7700" and confirmed it by viewing an online booking sheet. In viewing the Respondent's phone records, she observed his name to be listed on them and agreed that the documents listed the account number and showed both incoming and outgoing calls. Vincent agreed that there were yellow highlights on the document, although she did not recognize the incoming telephone number of the highlighted items. She did not recall Sirkisson's telephone number, however, after reviewing her case file, she specified that the number was [REDACTED]. Vincent did not remember if that number corresponds with what appears on the phone records.

Vincent testified that no cell phone tower "pinging" was conducted to determine the Respondent's location. She added that the investigation units do not have that capability anyway and noted that her unit has never done it. Only cellular phone records

are obtained through subpoena. Vincent testified that she did not examine cell phone tower records in this case.

Vincent was asked if her opinion would have changed regarding this case based on what she has heard. She testified, "It's hard to say, only because I closed my case before these interviews."² She said that if she had the information from those interviews in 2008, the aggravated harassment allegation would have still been substantiated based on the fact that the Respondent was arrested for it. Vincent admitted that the other allegations may have changed. She agreed that because the Respondent was arrested for aggravated harassment, that allegation was deemed substantiated.

During redirect examination, Vincent affirmed that the incident happened around 6:30 PM. She agreed that in November, it would have been dark at that time. She acknowledged that the DMV printout indicated that the Respondent had a grey car, and that Ramsaren reported that it was light colored.

With respect to Sirkisson's interview on the evening of the incident (see DX 2C), Vincent agreed that Sergeant Contino asked her if Ramsaren went outside to speak to the Respondent, and she indicated in the negative, claiming that the two spoke on the telephone. Vincent recalled Sirkisson later telling Lieutenant Manson in an interview that she "just wanted to get this over with." Vincent was unable to say if recanting an allegation is a way in which to end a case. Vincent also recalled asking Sirkisson about her written recantation in March of 2009. She indicated that the Respondent wanted her to write this letter.

² Vincent was most likely referring to the latest interviews conducted in this case of the complainants, in 2009.

Regarding the dispute between the Respondent and Ramsaren, Vincent testified that it occurred over the telephone.

The Respondent's Case

The Respondent called Devanand Sharma and also testified in his own behalf.

Devanand Sharma

Sharma is the Respondent's father. He testified that on November 11, 2007 he was with the Respondent watching a football game on television. Sharma stated that he and the Respondent were at their home and in each other's presence until sometime after 7:00 PM, when the Respondent got a call from the 107 Precinct saying that he needed to come down there. Sharma testified that neither he nor the Respondent had left the residence between 3:00 PM and the time of that phone call, and that prior to the call from the precinct he thinks that his son received approximately two other phone calls during that time period.

Sharma testified that he has a desktop computer in his home, and that it is located in the same room and in the same vicinity as the television. He did not remember if he had observed the Respondent sitting at the computer at any point during that day.

Upon cross-examination Sharma said that as of November 11, 2007 the Respondent was living with him and that their relationship is, "very close." He acknowledged that he loves his son a lot, "Like every other person should love their kids," and that he would never want to see any harm come to his son, "Like any other person wouldn't like that to happen."

The Respondent

The Respondent has been a member of the Department for over three years. He was previously a member of the United States Navy for almost five years where he was assigned as a submarine mechanic. The Respondent said he submitted to extensive physical testing in order to handle the duties of being a submarine mechanic. During his tenure in the Navy, he was assigned for a six month deployment to [REDACTED]. He received two awards for Navy Marine Corp achievement from the Secretary of the Navy and an award from his Commanding Officer. The Respondent was honorably discharged from the Navy and had no disciplinary history. Similarly, he said that prior to this incident he had no disciplinary history with this Department.

On November 11, 2007, the Respondent recalled that he received a telephone call around 5:30 PM from Sirkisson. She told the Respondent that she did not want to go out with her boyfriend, Ramsaren, that evening. Sirkisson then "abruptly" hung up. Although he tried calling her back, he was unsuccessful in reaching her. Shortly thereafter, the Respondent testified that he received an AOL "instant message" (IM) on his computer from Sirkisson asking him to come over and inquiring how long he would take. The Respondent said that he did not go to meet Sirkisson; he remained home watching a football game with his father. He noted that after he tried to call Sirkisson back, he received a phone call from Ramsaren. He testified that Ramsaren was cursing at him and Sirkisson was screaming in the background and asking him to stop. In response, the Respondent called Police Officer D'Antonio and asked him to investigate the situation. He explained that he did not call 911 because Sirkisson and Ramsaren argue a lot and he was unsure if it was an "actual police emergency." He subsequently heard

back from D'Antonio who told him "everything was wrapped up that there was nobody there. That the sector had responded already and handled it."

Later that evening, the Respondent received a phone call from Sergeant Campanella of the 105 Precinct asking him to report to the 107 Precinct. He arrived there at around 7:10 PM and presented his ID upon request. The Respondent was informed by a PBA delegate that his ex-girlfriend, Sirkisson, made an allegation that he had threatened to kill her.

During his IM conversation on the computer, the Respondent said he believed that he was going to go to meet Sirkisson. However, that never occurred. He explained that he later learned from his attorney that he was not conversing with Sirkisson on the computer, it was actually Ramsaren. He believed he was conversing with Sirkisson.

As a result of the allegation made against him, the Respondent was arrested and charged criminally. Ultimately, the charges were dismissed. During the pendency of the criminal proceeding, the District Attorney's office made two plea offers: a misdemeanor with a sealed record, and an adjournment in contemplation of dismissal with a sealed record. Both were refused by the Respondent because he said that he would not accept a plea for something that he did not do.

The Respondent testified that the Department suspended him for 112 days without pay. Then, he was subsequently suspended with pay from March to August of 2008, and thereafter placed on modified assignment, his current duty status.

The Respondent was shown his telephone records (RX B). He testified that he printed these records out, online, by going to a website controlled by Sprint. In accessing his account, he was able to print out his phone bill. He specified that he printed the bill

out about a month after the incident in this case. In response to the Court, the Respondent said that he looks at his phone records online and elected to print them out sometime in December because of the allegations made against him. The Respondent indicated that the records reflect calls made to and received by Sirkisson, and specified that they are highlighted on pages 4 and 5 of RX B.

As a result of the criminal case that was brought against him, the Respondent said that he lost his veteran's benefits, a certain sum of money given to him every six months. Additionally, the Respondent testified that it cost him \$3500 to hire an attorney to represent him in the criminal case.

The Respondent acknowledged that he attempted to call Sirkisson on November 11, 2007. He denied, however, ever calling her with the intent to annoy, harass or threaten that he was going to kill her. He similarly denied ever going to her house and threatening Ramsaren. Moreover, the Respondent said that he never went to Sirkisson's home at all on November 11.

On cross-examination, the Respondent agreed that because of his arrest, an order of protection was issued by Queens Criminal Court on behalf of Sirkisson. He also agreed that this order was in effect in January of 2008 and prohibited him from having any contact with Sirkisson. Third party contact with her was also barred. The Respondent denied that he ever contacted Sirkisson while the order of protection was in effect.

The Respondent was shown an exhibit, DX 5, and he recognized it as his phone records. While he agreed that [REDACTED] is his cellular phone number, he did not

know if [REDACTED] was Sirkisson's number. He disputed calling Sirkisson on January 13, 2008, and having a 15 minute conversation with her.

In February of 2008, the Respondent acknowledged receiving a letter from Sirkisson's sister-in-law, Stephanie. He agreed that this occurred a month after the January cell phone call was placed to him and affirmed that it was received suddenly. In response to the Court's inquiry, the Respondent indicated that he never asked Sirkisson to write this letter over the phone or any other way.

After a discussion about telephone records by the Court, counsel for the Department and counsel for the Respondent, the Respondent asserted that he did not call Sirkisson or speak to her.

Prior to November of 2007, the Respondent admitted to being involved in a relationship with Sirkisson for about a year. During that time, the two lived together. Ultimately, Sirkisson chose to end the relationship so that she could be with Ramsaren. The Respondent said he was "a little" upset over the end of his relationship with Sirkisson. He admitted that he was not happy with Sirkisson or Ramsaren. Before the November 11 incident, the Respondent testified that he had an argument with Ramsaren because "he wouldn't leave us (Respondent and Sirkisson) alone...he was always bothering us."

The Respondent acknowledged that he had a verbal dispute with Ramsaren on November 11. He testified that Ramsaren telephoned him, cursing and angry. He reiterated that it was during the phone call that he heard Sirkisson screaming in the background. The Respondent recalled stating during an Official Department Interview that during this phone call, it sounded as if Ramsaren was hurting Sirkisson. Confronted

that he never called 911 to report this, the Respondent contended that he telephoned another police officer about his concern. He stated that Sirkisson and Ramsaren constantly argued. He did not perceive Ramsaren's comments towards him as a threat, he testified, "He was just arguing I am going to kick your ass and a whole bunch of things. I didn't take it like a threat there."

The Respondent affirmed that Ramsaren was aware that he was a police officer. He agreed that Ramsaren may have thought he had a gun. He also said that Ramsaren asked him to come outside.

On redirect examination, the Respondent testified that he was never charged with violating any orders of protection.

When shown DX 5, the Respondent affirmed that page two reflects a number of incoming calls. He recognized that on this page, it reflects that he received telephone calls from Sirkisson's cell phone. After looking through the entirety of that exhibit, the Respondent was able to identify five incoming calls to him from Sirkisson. In response to the Court's inquiry, he said he was unsure of how many different cell phones Sirkisson had. Within DX 5, he recognized one number as belonging to Sirkisson, and specified that it was not [REDACTED]. The Respondent testified that Sirkisson made these telephone calls to him and he did not accept them due to the order of protection. Rather, his mother accepted the calls.

The Respondent reiterated that he received the recantation letter from Stephanie, Sirkisson's sister-in-law. He did not contact her and had no knowledge of what he was going to receive from her. The Respondent said that he supplied the recantation to his attorney who was supposed to provide it to the District Attorney's office.

During re-cross examination, the Respondent agreed that the order of protection on behalf of Sirkisson prohibited third-party contact. While he admitted that he was friends with Stephanie, he denied ever asking her to speak to Sirkisson to obtain the recantation. The Respondent testified that he received the recantation sometime in February of 2008.

In response to the Court, the Respondent reiterated that he identified five incoming phone calls from Sirkisson within his phone records.

FINDINGS AND ANALYSIS

The facts of this case are remarkably straightforward. The Respondent is the former boyfriend of Sirkisson. She is now married to Ramsaren who was her boyfriend at the time of this incident, November 11, 2007, (but who referred to himself as her husband – even then).

The Respondent is alleged to have called Sirkisson on the telephone and after receiving a negative response to his request that she come outside and meet him, threatened to kill her. Ramsaren also allegedly spoke to the Respondent on the telephone shortly thereafter. During that conversation the Respondent is alleged to have threatened to “pop” him, which Ramsaren concluded was a threat to shoot him. Ramsaren also claimed to have seen the Respondent’s car outside the house where he was with Sirkisson.

Neither Sirkisson nor Ramsaren was willing to testify at the Departmental trial and the Department relied on various hearsay utterances such Ramsaren’s call to 911, (DX 1A & B), a written Domestic Incident Report prepared by Sirkisson (DX 4) and

interviews given by Sirkisson and Ramsaren over the telephone shortly after the incident (DX 2 A, B & C).

The Respondent has denied all of the alleged misconduct. The Respondent also notes that Sirkisson issued a written recantation, (RX A). She was also interviewed by the Department on the telephone several months before the trial and confirmed that recantation. (DX 3 A & B). Her new claim, in essence, was that she had maintained a friendly relationship with the Respondent which made Ramsaren jealous, when he discovered them talking on the telephone. To hide the call she hung-up but Ramsaren confirmed the liaison through a computer communication with the Respondent in which Ramsaren pretended to be her. Ramsaren then called 911 and fabricated the claims against the Respondent.

The Department points out that Ramsaren was also interviewed several months before the Departmental trial and that he did not recant (DX 3 A & C).

There are two specifications; Specification No. 1 relies solely on the hearsay statements by Sirkisson while Specification No. 2 relies solely on the hearsay statements of Ramsaren. But both allegations are part of a larger incident arising out of the relationship between Sirkisson and the Respondent on the one hand, as well as the relationship between Sirkisson and Ramsaren on the other. To assess the facts therefore, it is necessary to consider the larger incident as well as the credibility of Sirkisson and Ramsaren individually.

The Department urges the Court to accept Sirkisson's early statements as reflective of what really happened and to reject her later recantations as the product of

concern about the Respondent losing his job. The Department further asserts that some of the early statements are inherently reliable because they are spontaneous utterances.

The concept of an “excited utterance” or as it is more formally called a “spontaneous declaration” is an exception to the hearsay rule which permits a statement to be received in evidence because it reflects the “impulsive or instinctive reaction of the person who uttered it,” see Richardson on Evidence 11th Edition, sections 8-604 to 8-606. The rule does not assert that the spontaneous declaration is true but merely that it may be considered as evidence.

In this forum hearsay is admissible but the consideration must be given to the reason for the exception to the hearsay rule which is that such a statement is not planned and is made without guile or motive but as a spontaneous reaction to an event.

Sirkisson:

None of the statements made by Sirkisson qualifies as such a spontaneous utterance. Her first statement was made well after the alleged incident in an interview with Campanella. While the lapse of time does not automatically disqualify a statement from being an excited utterance the lapse of time in this case certainly gave Sirkisson time to “reflect and fabricate,” Richardson, supra, § 8-606. Moreover, Campanella indicated that he thought Sirkisson was being coached by Ramsaren which is a further indication that her statements were something less than spontaneous or reflexive.

Interestingly enough, while the Department wants the Court to accept Campanella’s testimony about the substance of Sirkisson’s statement it wants the Court to reject his testimony about her appearing to have been coached.

Thus to accept the Department's case regarding Specification No. 1 the Department has asked the Court to believe part of Campanella's testimony and reject another part of it while it also asks the Court to accept one of Sirkisson's hearsay statements and reject two later hearsay statements by her.

The Department argues that the recantation was motivated by a desire not to cause the Respondent to lose his job and because she just wanted to the matter over with. Certainly, this was a part of the motivation and Sirkisson said as much, but that does not mean that it was the only motivation. What is needed is some extrinsic evidence to establish that the earlier statement was believable while the later was not.

During the cross-examination of the Respondent, an effort was made to establish what might qualify as extrinsic evidence. The Department offered in evidence, telephone records of a call made from the Respondent's cellular telephone to a phone number associated with Sirkisson. This phone call occurred approximately a month before Sirkisson issued her recantation and the Department argued that it is evidence that he caused her to issue the recantation.

The problems with this assertion are glaring. The Respondent denied speaking to Sirkisson on the telephone at that time. The Department has absolutely no evidence that he did. There is no evidence that the number called is her phone or even one used by her regularly. There is evidence that the Department used that number to reach Sirkisson but that event did not involve direct contact with her. The number was called, a message was left for her and she called back. We don't know if she received the message directly or through a third party.

Thus the fact that a call was made from the Respondent's cell phone to a number associated with Sirkisson is not proof that the Respondent spoke to her. On the other hand, one could draw an inference that he did.

The second part of the argument is that this phone call from the Respondent to Sirkisson led her, approximately a month later to issue her recantation. The problem here is that there is absolutely no linkage between the purported telephone conversation and the recantation. There is no testimony or evidence of any kind as to the content of the alleged phone call nor is there an explanation as to the delay between the telephone call and the recantation. Again, the best that can be said is that inference can be drawn, in this situation a very weak inference; that the call led to the recantation.

The entire argument by the Department can thus be characterized as an inference upon an inference; which is proof of nothing, Richardson, supra, section 4-302.

In the end, there is no extrinsic evidence to establish that the first statement was more worthy of belief than the later recantations.

Ramsaren:

Ramsaren made several statements which are before the Court in this proceeding; his call to 911, his interview with Campanella, on November 11, 2007 and his recorded interview later that day with Contino as well his recorded interview of March 12, 2009 with Manson.

The first hearsay statement by Ramsaren might seem to qualify as a spontaneous declaration as it occurred during the 911 call that he made directly after the alleged incident involving him. While the evidentiary rule on spontaneous declarations might make such a statement admissible it does not mean it must be accepted as true. The rule

of evidence allows such a statement to be considered by the finder of fact in a forum that does not otherwise permit hearsay. After that, the finder of fact must assess it along with any and all other evidence.³

More significantly, the 911 call does not support the specification. Specification No. 2 claims that the Respondent threatened to “pop” Ramsaren. In the 911 call Ramsaren states that “I have a police officer outside that’s assaulting my wife.” He then clarifies that the police officer is “like calling all this threats and stuff like that.” At another point he says; “He’s threatened her to kill herself I guess.” There is no allegation in the 911 call that the Respondent threatened to harm Ramsaren and the word “pop” does not appear anywhere in that call.

Shortly after that Campanella arrived on the scene. He indicated that Ramsaren never mentioned a threat to him by the Respondent nor did he claim that the Respondent threatened to “pop” him.

The alleged threat against Ramsaren and the term “pop” first appear in an interview with Contino later that day. There is no indication that there was anything “spontaneous” about this interview. A review of the tape of that interview and the transcript indicate at least some confusion. For instance, Ramsaren claims that during a telephone conversation the Respondent made a threat to “pop” him if he came outside. Ramsaren indicated that he understood that to mean that the Respondent was going to shoot him if he came outside. Then Ramsaren says he went upstairs and apparently saw the Respondent’s car from the window. Such conduct might indicate that he was afraid, but then Ramsaren said he went downstairs and outside in the back of the house where he proceeded around to the front of the house toward the Respondent. Ramsaren said he

³ It is worth noting that Ramsaren sounds calm during this 911 phone call.

saw the Respondent seated behind the steering wheel and that he knew the Respondent saw him. Ramsaren then described himself as cursing at the Respondent. No explanation is given for this behavior after the Respondent allegedly threatened to “pop” him and raises questions as to whether there really was a threat⁴.

The third interview was conducted over the telephone, with Manson. This interview was even more confusing. When asked if he spoke to the Respondent over the telephone on the night of the incident he said, “Yes I talked to him on the phone.” When asked what the Respondent told him, he said, “He was telling me that he could do whatever he wants, he’s NYPD and he can do anything and get off with it and stuff like that.” Manson then asked him about the specific words the Respondent used “when he said he was going to kill” and Ramsaren said “If he can’t get my wife, nobody gonna get her. If it means to kill her, he’s going to kill her.”

Later in the conversation Manson again asked about the telephone conversation of November 11, 2007 and asked specifically if the Respondent threatened him. Ramsaren then stated: “Like I don’t bother with him but he was talking stuff so...” Manson again trying to get the specific threat asked “Like what, what do you mean talking?” and Ramsaren stated: “I can’t remember, but he was talking stuff and like I was yelling and cursing at him on the phone. He was getting me made at the same time. Because of the same issue that I talked to him about it several times and he still wouldn’t listen so I got mad.”

In the end, the three versions of what allegedly occurred between the Respondent and Ramsaren on November 11, 2007 are quite different. To be sure, the interviews of

⁴ It should be noted that in her interview of November 11, 2007 Sirkisson stated that both the Respondent and Ramsaren were in the car talking.

November 11, 2007 with Contino and March 12, 2009 with Manson contain a wide range of other allegations against the Respondent, including claims that he pointed a gun at Sirkisson and that he threatened to commit suicide, but these are not charged. As to the specific threat to harm Ramsaren, that occurs only in the November 11, 2007 interview with Contino and does not appear in the original 911 call or the November 11, 2007 interview with Campanella or the later interview with Manson.

As with Specification No.1 there is no extrinsic evidence to support the charge. For instance, the claim that Ramsaren saw the Respondent's car at the scene is unsupported by any such extrinsic evidence and the fact that Ramsaren would know the color⁵ and make of the Respondent's car might easily flow from their prior knowledge of each other, a fact noted in the interview with Contino.

The Respondent's case:

Thus far we have only discussed the weaknesses in the Department's case. The Respondent also testified and offered evidence in this case which merit discussion.

The Respondent denied threatening either Sirkisson or Ramsaren. The Respondent and his father both testified that he was home watching a football game on the date and time in question and that he did not leave the house. While both the Respondent and his father are interested witnesses that does not mean they are not credible and there was no effective challenge to their credibility. The background of both the Respondent, who has years of service in the Navy as submariner and his father who

⁵ In the 911 call Ramsaren only describes the car as having a "light" color he never says what light color it is.

holds a responsible position at a bank, offer some support for the notion that they are reliable and credible.

Additionally, the Respondent offered in evidence his telephone records he stated he downloaded from his account via the internet. While the Department objected to these records going into evidence there is ample reason to believe that these are in fact genuine telephone records. Moreover the Respondent identified two, one-minute calls listed on these records from him to Sirkisson at 6:29 PM and 6:30 PM, precisely the time she originally claimed he called her, facts which tend to confirm the credibility of both the Respondent and these records.

The records also show a call which the Respondent claims was from her to him at 5:40 PM lasting 6 minutes. There is another call at 6:31 PM which the Respondent claims was from Sirkisson which lasted 5 minutes. With regard to this phone call the caller's number is listed as "unavailable."

Even if we discount that last phone call, the telephone records support the Respondent's testimony that Sirkisson called him that evening and that they were still in communication despite the fact that she was seeing and apparently living with, and engaged to, Ramsaren.

Moreover, these records coupled with the Respondent's testimony support Sirkisson's recantation where she acknowledged calling the Respondent.

The Recantation:

In her recantation Sirkisson indicates that while she was on the phone with the Respondent her boyfriend walked in and got mad. That he called 911 and that she was basically sucked into making the complaint. In her telephone interview with Manson she

went into greater detail indicating that after he found her on the phone Ramsaren used her computer to e-mail the Respondent and set up a meeting. This corresponds to the Respondent's testimony that he engaged in that e-mail exchange believing that he was communicating with and getting ready to meet Sirkisson. She indicated that after that exchange of e-mails Ramsaren, now angry at the Respondent, called the police and essentially fabricated the complaint.

The story set forth in the recantation makes more sense and is less conflicted than the claims against the Respondent in these specifications. The recantation is a coherent story of one boyfriend endeavoring to permanently eliminate a rival for the affections of his girlfriend. The recantation dovetails with Campanella's observation that Ramsaren was coaching Sirkisson when she filed her original complaint. The recantation is consistent with the testimony of the Respondent and his father, and offers a credible explanation for the lack of consistency in Ramsaren's wide ranging allegations against the Respondent.

Conclusions:

Specification No. 1 charges that the Respondent called Sirkisson and told her, "If you don't come out, I'm going to kill you." The Department's case requires one to believe one of Sirkisson's statements and reject another without any clear basis to do so. As such, the Department has failed to meet its burden. Moreover, there is substantial reason to believe that the recantation is in fact closer to the truth than the original claim. The Respondent is found not guilty of this specification.

Specification No. 2 alleges that the Respondent "did state numerous times" to Ramsaren, "I will pop you and I can do whatever I want, I'm a cop."

Again, the Department has failed to meet its burden of proof. Ramsaren's hearsay statements are inconsistent and are not supported by any independent evidence. On this basis alone the Department has failed to meet its burden of proof. In addition, here again, there is reason to believe that in fact the incident in the specification did not occur. The Respondent is found not guilty of this specification.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner - Trials

APPROVED

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RAYMOND W. KELLY
POLICE COMMISSIONER